

REMARKS

Claims 1, 3-8 and 10-12 are pending. No new matter has been added by way of the present amendment. For instance, claim 1 has been amended to include subject matter taken from claims 2 and 6, as well as from the present specification at page 38, lines 18-20. Claims 2 and 9 have been cancelled and the dependency of claims 3, 10 and 12 has been altered. Claims 3, 6 and 12 have been amended to be consistent with the amendments made to claim 1. Finally, claim 7 has been amended into dependent format. Accordingly, no new matter has been added.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues Under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-12 under 35 U.S.C. § 102(b) as being anticipated by either MacIntyre et al., U.S. Patent No. 5,135,845 (hereinafter referred to MacIntyre '845) or and Hinz et al., U.S. Patent No. 5,254,455 (hereinafter referred to as Hinz '455).

Applicants respectfully traverse each of the above two rejections.

Distinctions Between The Present Invention and MacIntyre '845

MacIntyre '845 fails to suggest or disclose a material which combines a sensitizing dye according to formula (IV) and a sensitizing dye according to formula (II). In fact, MacIntyre '845 lacks a specific

disclosure of a compound according to formula (IV) of the present invention. MacIntyre '845 does disclose a fluorine-substituted benzoazolecyanine dye generically; however, one of skill in the art is given no direction that would motivate them to select the specific compounds according to formula (IV) of the present invention. Rather, one of skill in the art would have to choose judiciously from the general description of MacIntyre '845 to arrive at general formula (IV) of the present invention.

There can be no anticipation where one skilled in the art would have to choose judiciously from a genus of possible combinations, In re Sivaramakrishnan, 213 USPQ 441, 673 F.2d 1382 (CCPA 1982), or where the reference does not highlight the claimed mixture, among the many dozens disclosed, or suggest the claimed ratio, In re Kollman et al., 201 USPQ 193, 595 F.2d 48 (CCPA 1979).

Accordingly, no anticipation exists based upon MacIntyre '845. Reconsideration and withdrawal of this rejection are respectfully requested.

Distinctions Between The Present Invention and Hinz '455

Hinz '455 fails to suggest or disclose a compound according to general formula (IV) of the present invention. A review of Hinz '455 reveals only a pentamethine dye; however, there exists no suggestion or disclosure of the monomethine or trimethine dye according to general formula (IV) as required by claim 1.

Accordingly, no anticipation exists based upon Hinz '455. Reconsideration and withdrawal of this rejection are respectfully requested.

Issues Under 35 U.S.C. § 102(e)

The Examiner has rejected claims 1-12 under 35 U.S.C. § 102(e) as being anticipated by either Nakamura et al., U.S. Patent No. 6,458,524 (hereinafter referred to as Nakamura '524) or Hioki et al., U.S. Patent No. 6,365,335 (hereinafter referred to as Hioki '335).

Applicants respectfully traverse each of the above two rejections.

Distinctions Between The Present Invention and Nakamura '524

Nakamura '524 fails to suggest or disclose a silver halide photographic material, wherein silver halide emulsion layer contains at least a sensitizing dye according to general formula (IV) and a sensitizing dye according to general formula (II) of the present invention. A review of independent claim 1, upon which all other claims depend, reveals that the emulsion layer upon the support, must contain at least two sensitizing dyes according to general formula (IV) and (II). Since Nakamura '524 lacks any suggestion or disclosure of such subject matter, no anticipation exists. Reconsideration and withdrawal of this rejection are therefore requested.

Distinctions Between The Present Invention and Hioki '335

Hioki '335 fails to suggest or disclose a silver halide photographic material, wherein silver halide emulsion layer contains at least a sensitizing dye according to general formula (IV) and a sensitizing dye according to general formula (II) of the present invention. A review of independent claim 1, upon which all other claims depend, reveals that the emulsion layer upon the support, must contain at least two sensitizing dyes according to general formula (IV) and (II). Since Hioki '335 lacks any suggestion or disclosure of such subject matter, no anticipation exists. Reconsideration and withdrawal of this rejection are therefore requested.

In view of the above, Applicants respectfully submit that all currently pending claims are in condition for allowance. The cited references of MacIntyre '845, Hinz '455, Nakamura '524 and Hioki '335 are distinguished. Accordingly, the Examiner is respectfully requested to withdraw all rejections and allow the currently pending claims.


If the Examiner has any questions or comments, please contact the undersigned at the offices of Birch, Stewart, Kolasch & Birch, LLP at the number listed below.

Pursuant to 37 C.F.R. § 1.17 and 1.136(a), Applicants respectfully petition for a one (1) month extension of time for filing a response in connection with the present application. The required fee of \$110.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 

Marc S. Weiner, #32,181

Craig A. McRobbie #42,874

MSW/CAM/mmi
0649-0820P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

(Rev. 11/02/01)